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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: MAY 13 2008

MSC-06-032-11275

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant furnishes additional corroborating evidence.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the

submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 31, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Richmond Hill, New York from September 1981 until June 1987. At part #32 of the application, the applicant indicated that since her entry into the United States, she has had one absence during the requisite period. This absence was from December 15, 1987 until January 10, 1988. At part #33 of the application, the applicant showed her first employment in the United States to be as a housekeeper in Queens from October 1981 until May 1987. The applicant listed the name of her employer as "S/E" without any other specific information.

On March 7, 2006, the New York District Office interviewed the applicant in connection with her application for temporary resident status. During her interview the applicant testified that she first entered the United States on September 5, 1981. The applicant asserted that since this entry she has had one absence from the United States from December 1987 until January 10, 1988. The applicant testified that she has had no other departures from the United States.

The applicant's claim of continuous residence in the United States during the requisite period with one absence from December 15, 1987 until January 10, 1988 is inconsistent with documentation in her record. The applicant's record shows that on September 2, 1986 she was apprehended by United States Border Patrol two miles west of the port of entry at San Ysidro, California. The record shows that she was apprehended upon her entry into the United States. The Border Patrol Agent's narrative of the applicant's travel to the United States provides that the applicant traveled from Colombia to Mexico on August 27, 1986. While in Mexico, the applicant met a smuggler in Tijuana and made arrangements to be smuggled into Los Angeles. The applicant planned to seek employment in Los Angeles.

This inconsistency casts doubt upon the applicant's claim that she first entered the United States on September 5, 1981. Furthermore, the inconsistency indicates that the applicant may have first entered the United States on September 2, 1986. Notably, the applicant submitted with her application a letter, dated May 24, 2006, where she states, "I, [redacted] . . . enclose some letters of friends who know me since 1981. I do not have proof of my jobs since 1981 to 1986 because I was working as a housekeeper. The [sic] paid me cash, besides some people moved to another [sic] places . . . Even so I have proof since 1986 to now." The applicant's own admission that she has little proof of her residence in the United States since prior to 1986 further adds to the doubts regarding her continuous residence in the United States since 1981. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant submitted numerous documents in support of her application. This proceeding will focus only on those documents that relate to the requisite period. The applicant submitted as corroborating evidence of her residence in the United States during the requisite period, copies of her 1987 and 1988 federal income tax returns, an employer letter from the Family Health Center, and a letter from the Church of St. Sebastian.

The letter from [redacted] MD, FAAP, Family Health Center, dated February 28, 2006, provides, "[t]his is to certify that [redacted] has been under my employment as a cleaning lady in my private practice." The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide, in part, that letters from employers should include the applicant's exact period of employment and the applicant's address at the time of employment. There is no information in this letter to indicate that the applicant was employed with the Family Health Center during the requisite period. Therefore, this letter does not have any probative value as evidence of the applicant's residence in the United States during the requisite period.

The letter from [redacted], Church of St. Sebastian, dated February 28, 2006, provides, "[t]o the best of my knowledge and belief [the applicant] has lived in the Woodside community from 1981 to 1989 at [redacted], Woodside, New York 11377 and was a parishioner of St. Sebastian Church at that time." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations from churches should establish how the author knows the applicant and

the origin of the information being attested to. This letter fails to follow these delineated guidelines. There is no indication in the letter that _____ has personal knowledge of the applicant's involvement with his church from 1981 until 1989. Moreover, the address [redacted], Woodside, New York is not listed on the applicant's Form I-687 application. There is no indication on her application that she has ever resided at this address. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On May 2, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director found that the letters are neither credible nor amenable to verification. The director determined that the applicant failed to submit credible documentation that would establish by a preponderance of the evidence her residence in the United States during the requisite period.

In response to the NOID, the applicant submitted letters from [redacted] and [redacted] The applicant also resubmitted the letter from the [redacted]

The letter from [redacted], dated May 24, 2006, provides, "I [redacted] . . . do hereby declare that [redacted] has been my friend since September 1981." This letter contains several apparent deficiencies. First, the letter does not provide any information on [redacted] first acquaintance with the applicant. Second, the letter does not provide any information on Mr. [redacted] contact with the applicant during the requisite period. Third, the letter does not indicate that [redacted] first met the applicant in the United States. Finally, this letter does not contain any relevant information to corroborate the applicant's residence, such as her address(es) during the requisite period. Given these numerous deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States since September 1981.

The letter from [redacted] dated May 26, 2006, provides, "I,m [sic] a hair stylist working at Greay [sic] Clips for hair . . . [redacted]: I now [sic] her from October 1981. She is [sic] very honest person." This letter also contains several apparent deficiencies. First, the letter does not provide any information on [redacted]'s first acquaintance with the applicant. Second, the letter does not provide any information on [redacted]'s contact with the applicant during the requisite period. Third, there is no indication in this letter that [redacted] first met the applicant in the United States. Finally, this letter does not contain any information to corroborate the applicant's residence, such as her address during the requisite period. Given these numerous deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States since October 1981.

On September 9, 2006, the director issued a denial notice to the applicant. In denying the application, the director noted that the office contacted [redacted] and he testified that he met the applicant in 1986. The director also noted that the office was unsuccessful in contacting Ms.

The director found that the letter from the Reverend [redacted] is neither credible nor amenable to verification. The director determined that the applicant failed to submit credible

documentation that would constitute by a preponderance of the evidence her residence in the United States.

On appeal, counsel for the applicant submitted additional documentation to address the deficiencies stated in the director's denial notice.

Counsel submitted a copy of another letter from [redacted], dated October 2, 2006. This letter provides:

> I know [redacted] since September 1981. I met her at a party that year. An immigration agent called me twice. I told the agent that I know [redacted] since 1981. There was a misunderstanding about the date, I met [redacted] it is not 1986. It was 1981. 1986 was a confusion [sic] a miscommunication. When they called me the second time to my cell phone, the communication got lost, so I couldn't explain better to the agent . . . .

This letter fails to provide any additional relevant information on personal knowledge of the applicant's residence in the United States during the requisite period. Notably, the letter fails to indicate that [redacted] first met the applicant in the United States. The letter also does not provide any detailed information on [redacted]s contact with the applicant during the requisite period. Therefore, this letter does not bolster the probative value of [redacted]s previous statement.

Counsel submitted another letter from [redacted], Church of St. Sebastian, dated September 29, 2006. Counsel also submits the white pages phone listing of the Church of St. Sebastian. Reverend [redacted] letter provides, "[t]o the best of my knowledge and belief [the applicant] has lived in the Woodside community from 1981 to 1989 at [redacted] Woodside, NY 11377 and she [sic] still a parishioner of St. Sebastian Church." This letter is nearly identical to the previous letter from [redacted] Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), this letter fails to establish the origin of the information [redacted]s has attested to. As with the previous letter, there is no indication in this letter that [redacted] has personal knowledge of the applicant's involvement with his church from 1981 until 1989. Additionally, the address [redacted], Woodside, New York is not listed on the applicant's Form I-687 application. Therefore, this letter does not bolster the probative value of Reverend Francis's previous statement.

The record shows that on February 22, 2002, the applicant filed a Form I-485, Application to Adjust Status, under section 1104 of the Legal Immigration Family Equity (LIFE) Act. In support of this application, the applicant submitted notarized letters from [redacted] and [redacted] and a letter from the Church of St. Sebastian.

The notarized letter from [redacted] dated February 27, 2004, provides, "I, [redacted] . . . do hereby declare that [redacted] has been my friend since 1981." Similarly, the notarized letter from dated February 27, 2004, provides, "I, [redacted]

. do hereby declare that [redacted] has been my friend since September 1981." These letters contain several apparent deficiencies. First, the letters do not provide any information on the authors' first acquaintance with the applicant. Second, the letters do not provide any information on the authors' contact with the applicant during the requisite period. Third, the letters do not indicate that the authors first met the applicant in the United States. Finally, the letters do not contain any relevant information to corroborate the applicant's residence, such as her address(es) during the requisite period. Given these numerous deficiencies, these letters are without any probative value as evidence of the applicant's residence in the United States since 1981.

The letter from Reverend [redacted] Church of St. Sebastian, dated February 26, 2004, is identical to the letter from Reverend [redacted]. This letter provides, "[t]o the best of my knowledge and belief [the applicant] has lived in the Woodside community from 1981 to 1989 at [redacted] Woodside, NY 11377 and was a parishioner of St. Sebastian Church at that time. Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), this letter fails to establish the origin of the information Reverend Abels has attested to. As with the previous letters from St. Sebastian Church, there is no indication in this letter that Reverend _____ has personal knowledge of the applicant's involvement with his church from 1981 until 1989. Moreover, the address [redacted] Woodside, New York is not listed on the applicant's Form I-687 application. There is no indication on her application that she has ever resided at this address. Therefore, this letter is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The record shows that the applicant submitted a Form I-687 application, signed December 15, 1990, for a determination of her class membership in *CSS v. Thornburgh*. The applicant submitted as corroborating evidence a statement from St. Sebastian Church, affidavits from [redacted] and [redacted], and a letter from [redacted]

The letter from the St. Sebastian Church is a fill-in-the-blank statement, dated September 1, 1989, signed by [redacted] Mr. [redacted] title with the church is not record on this letter. The letter provides, "[t]his is to state that [redacted] appeared before me on this day and swore that she has lived in the United States since September 1981. [redacted] swears that she has attended religious services in our church since they [sic] have resided in Woodside, New York." This letter is based solely on the applicant's own testimony of her attendance at the St. Sebastian church. There is no indication that the church itself has any record of her membership or involvement. Therefore, this letter has no value as probative evidence of the applicant's continuous residence in the United States since September 1981.

The affidavits from [redacted] and [redacted] dated August 29, 1991, provide that they took the applicant to an airport on December 15, 1987.[1] These affidavits fail to provide the name and

[1] The affidavit from [redacted] was notarized on August 28, 1991.

location of the airport. There is no indication that the affiants took the applicant to an airport located in the United States. The affidavits offer no information related to the applicant's residence in the United States during the requisite period. Therefore, these affidavits are without any probative value as evidence of the applicant's residence in the United States on December 15, 1987.

The affidavit from [redacted], notarized on December 21, 1989, provides, "[t]his is to inform you that [redacted] of [redacted], Richmond Hill, Queens 11418, used to be our tenant at [redacted], Brentwood, NY 11717 since June 1987 to March 1989." This affidavit lacks details on [redacted]'s personal knowledge of the applicant's residence at this address. The affidavit does not indicate whether [redacted] directly collected rent payments from the applicant. It also does not provide any information on [redacted]'s position as the owner and/or manager of the property. Therefore, this letter is of minimal probative value as evidence of the applicant's continuous residence in the United States since June 1987.

The affidavit from [redacted], dated December 21, 1989, provides, "I [redacted] residing at [redacted] Richmond Hill N.Y. 11418, hereby certify that Ms. [redacted] was living in my house since September 1981 to June 1987 and she paid the rent for a room." The applicant has listed this address on her Form I-687 application. However, the applicant's record provides that on September 15, 1986 she was released on bond to [redacted] and resided at [redacted] address at [redacted] Woodside, New York. Therefore, this affidavit is without any value as probative evidence of the applicant's continuous residence in the United States during the requisite period.

The letter from [redacted] Rainbow Quilting Corporation, dated August 25, 1989, provides, "[p]lease be advised that [redacted] Social Security Number [redacted], was employed by me from May, 1987 to February, 1989." The regulations at 8 C.F.R. § 245a.2(d)(3)(i), provide, in part, that letters from employers should include the applicant's address at the time of employment, duties with the company, and whether or not the information was taken from official company records. This letter fails to follow these delineated guidelines. Furthermore, the author of this letter does not include the title of his position with the company. Given these deficiencies, this letter is of minimal probative value as evidence of the applicant's continuous residence in the United States since May 1987.

The affidavits from [redacted] and [redacted] are both fill-in-the-blank form affidavits, dated December 21, 1989. These affidavits provide that the affiants have personal knowledge of the applicant's addresses during the requisite period. The affidavit from [redacted] indicates that she first met the applicant at a factory in May 1982. This affidavit fails to provide any other details on [redacted]'s relationship with the applicant, such as the name of the factory where they first met. Furthermore, the applicant's Form I-687 application states that during the requisite period she was employed as a housekeeper. The applicant's Form I-687 shows that her employment as a factory machine operator was not until May 1987. The affidavit from Ms. [redacted] indicates that she first met the applicant at a party in November 1981. This affidavit

also fails to provide any other details on [redacted] relationship with the applicant. Relevant information would include details on where they met and their subsequent contact during the requisite period. Given these deficiencies, the affidavits from [redacted] and [redacted] are of minimal probative value as evidence of the applicant's residence in the United States during the requisite period.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide probative and credible evidence of her residence in the United States during the *entire* requisite period. The applicant submitted documents, which as noted, are either inconsistent or lack considerable detail. As discussed above, these documents have either no probative value or minimal probative value as evidence of the applicant's continuous residence in the United States during the requisite period. When viewing these documents either individually or within the totality, they do not establish that the applicant's claim is probably true. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide sufficient documentary evidence to establish her continuous residence in the United States during the entire requisite period renders a finding that she has failed to satisfy her burden of proof in this proceeding. *See* 8 C.F.R. § 245a.2(d)(5).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-, supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.